

PHILLIP A. TALBERT  
Acting United States Attorney  
JUSTIN J. GILIO  
Assistant United States Attorney  
2500 Tulare Street, Suite 4401  
Fresno, CA 93721  
Telephone: (559) 497-4000  
Facsimile: (559) 497-4099

Attorneys for Plaintiff  
United States of America

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
STEVEN ERIC CABRERA,  
  
Defendant.

CASE NO. 1:21-CR-00043-DAD-BAM

STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
FINDINGS AND ORDER

DATE: September 22, 2021  
TIME: 1:00 p.m.  
COURT: Hon. Barbara A. McAuliffe

**BACKGROUND**

This case is set for status conference on September 22, 2021. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice.” Under General Order 618, a judge “may exercise his or her authority to continue matters, excluding time under the Speedy Trial Act with reference to the court’s prior General Order 611 issued on March 17, 2020 . . . with additional findings to support the exclusion in the Judge’s discretion.” General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-by-case exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). This, previous, and subsequent General Orders were entered to address public health concerns related to COVID-19.

1 Although the General Orders address the district-wide health concern, the Supreme Court has  
 2 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive  
 3 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.  
 4 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no  
 5 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
 6 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
 7 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally  
 8 or in writing”).

9 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
 10 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-  
 11 justice continuances are excludable only if “the judge granted such continuance on the basis of his  
 12 findings that the ends of justice served by taking such action outweigh the best interest of the public and  
 13 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable  
 14 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that  
 15 the ends of justice served by the granting of such continuance outweigh the best interests of the public  
 16 and the defendant in a speedy trial.” *Id.*

17 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
 18 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
 19 natural disasters, or other emergencies, the government’s position is that this Court has discretion to  
 20 order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-  
 21 of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th  
 22 Cir. 1981). The court recognized that the eruption created “appreciable difficulty” for the trial to  
 23 proceed. *Id.* at 767-69; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing  
 24 *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public  
 25 emergency).

26 The coronavirus poses a similar, albeit more enduring, “appreciable difficulty” to the prompt  
 27 proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-  
 28 exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act

continuanes “in the context of the COVID-19 pandemic.” *United States v. Olsen*, --- F.3d ---, 2021 WL 1589359 at \*7 (9th Cir. Apr. 23, 2021). That non-exhaustive list includes: (1) whether a defendant is detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked speedy trial rights since the case’s inception; (4) whether a defendant, if detained, belongs to a population that is particularly susceptible to complications if infected with the virus; (5) the seriousness of the charges a defendant faces, and in particular whether the defendant is accused of violent crimes; (6) whether there is a reason to suspect recidivism if the charges against the defendant are dismissed; and (7) whether the district court has the ability to safely conduct a trial. *Id.*

In light of the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

### STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant’s counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for status conference on September 22, 2021.
2. By this stipulation, defendant now moves to continue the status conference until October 27, 2021, and to exclude time between September 22, 2021, and October 27, 2021, under 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4].
3. The parties agree and stipulate, and request that the Court find the following:
  - a) The government has represented that the discovery associated with this case includes investigative reports, photographs, body camera footage, cell phone extractions, and social media account data. All this discovery has been either produced directly to counsel and/or made available for inspection and copying.
  - b) Counsel for defendant desires additional time to conduct independent investigation, review the discovery (including a batch of supplemental discovery recently produced), and consult with her client.

1 c) Counsel for defendant believes that failure to grant the above-requested  
2 continuance would deny him/her the reasonable time necessary for effective preparation, taking  
3 into account the exercise of due diligence.

4 d) The government does not object to the continuance.

5 e) Based on the above-stated findings, the ends of justice served by continuing the  
6 case as requested outweigh the interest of the public and the defendant in a trial within the  
7 original date prescribed by the Speedy Trial Act.

8 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,  
9 et seq., within which trial must commence, the time period of September 22, 2021 to October 27,  
10 2021, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code  
11 T4] because it results from a continuance granted by the Court at defendant's request on the basis  
12 of the Court's finding that the ends of justice served by taking such action outweigh the best  
13 interest of the public and the defendant in a speedy trial.

14 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the  
15 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial  
16 must commence.

17 IT IS SO STIPULATED.

18  
19  
20 Dated: September 15, 2021

PHILLIP A. TALBERT  
Acting United States Attorney

21  
22 /s/ JUSTIN J. GILIO  
JUSTIN J. GILIO  
Assistant United States Attorney

23  
24  
25 Dated: September 15, 2021

/s/ Christina Corcoran  
Christina Corcoran  
Counsel for Defendant  
Steven Eric Cabrera

**ORDER**

IT IS SO ORDERED that the status conference is continued from September 22, 2021, to **October 27, 2021, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe**. Time is excluded pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv).

IT IS SO ORDERED.

Dated: September 15, 2021

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE